

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

TRANSCRIPT OF RECORD.

Court of Appeals, District of Columbia

APRIL TERM, 1908.

No. 1850. **530**

J. STEWART HARRISON AND ANDREW M. CURRY,
APPELLANTS,

vs.

JOHN C. BLACK, H. F. GREENE, AND JOHN A. McILHENNY,
COMMISSIONERS OF THE UNITED STATES CIVIL
SERVICE COMMISSION; HENRY B. F. MACFARLAND,
HENRY L. WEST, AND JAY J. MORROW, COMMIS-
SIONERS OF THE DISTRICT OF COLUMBIA.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FILED JANUARY 6, 1908.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

APRIL TERM, 1908.

No. 1850.

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APPELLANTS,

vs.

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SERVICE COMMISSION; HENRY B. F. MACFARLAND,
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In the Court of Appeals of the District of Columbia.

No. 1850.

J. STEWART HARRISON ET AL., Appellants,

vs.

JOHN C. BLACK ET AL., &C.

a Supreme Court of the District of Columbia.

In Equity. No. 27353.

J. STEWART HARRISON, ANDREW M. CURRY, Complainants,

vs.

JOHN C. BLACK, H. M. GREENE, and JOHN A. McILHENNY, Commissioners of the United States Civil Service Commission, and HENRY B. F. MACFARLAND, HENRY L. WEST, and JAY J. MORROW, Commissioners of the District of Columbia, Defendants.

UNITED STATES OF AMERICA, *District of Columbia*, ss:

Be it remembered, that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above entitled cause, to wit:

1 *Petition.*

Filed September 14, 1907.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

In Equity. No. 27353.

J. STEWART HARRISON, ANDREW M. CURRY, Complainants,

vs.

JOHN C. BLACK, H. M. GREENE, and JOHN A. McILHENNY, Commissioners of the United States Civil Service Commission, and HENRY B. F. MACFARLAND, HENRY L. WEST, and JAY J. MORROW, Commissioners of the District of Columbia, Defendants.

UNITED STATES OF AMERICA, *District of Columbia*, ss:

Injunction.

To the Honorable Justices of the Supreme Court of the District of Columbia, holding an equity term:

Now come J. Stewart Harrison and Andrew M. Curry, the complainants herein, who, complaining of the above named defendants,

John C. Black, H. M. Greene and John A. McIlhenny, Commissioners of the United States Civil Service Commission and Henry B. F. Macfarland, Henry L. West and Jay J. Morrow Commissioners of the District of Columbia, a body corporate, and each of them, by this their petition and bill in equity, respectfully allege and show:

First. That they, the said complainants are citizens of the United States, of full age, and residents of the District of Columbia; and they bring this suit in their own right and for the benefit of themselves, and of any others who, being similarly interested and aggrieved, may hereafter be brought in as parties complainant.

Second. That the defendants the Commissioners of the United States Civil Service Commission, are officials of the general government of the United States, officially resident in the District of Columbia, and are not sued in their own right, but solely, in their official capacity as such Commissioners, aforesaid, as more fully hereinafter stated and set forth; and the defendants, the Commissioners of the District of Columbia are also sued in their official capacity as executive officers of the municipal corporation the said District of Columbia.

Third. That the complainants are now, and have been since their birth, citizens of the United States of America, and for many years last past have been, and are now residents of the District of Columbia: that as such citizens and residents they have been and are tax payers, and have contributed and borne and do now contribute and bear their proportionate part and share of the expenses of the government of the United States and of the District of Columbia, and are thereby financially burdened and affected by and interested in the expenditure of the public money, national and municipal; and as such citizens and residents, and tax payers and contributors as aforesaid, they have a property interest in said public money, national and municipal, and in its proper and economical use and disbursement; and as such citizens and residents, under the conditions aforesaid, they are subject to the laws of the land and are bound to obey the same, and are entitled to have the same rightfully administered and enforced without usurpation or wrongful exercise or abuse of authority by the said defendants, national and municipal officials as aforesaid; and complainants are entitled to have and enjoy their civil rights and to be protected in the due exercise and enjoyment of the same, equally and without class distinctions, as such citizens, residents and tax payers.

Fourth. That the defendants the United States Civil Service Commission hold public office under the general or national government of the United States, under and by virtue of an Act of Congress approved January 16, 1883, entitled "An Act to Regulate and Improve the Civil Service of the United States," and acts amendatory thereof: that in said act and amendatory acts the Congress of the United States provided for the creation of said United States Civil Service Commission, and for a system of competitive examinations for Federal offices, under the United States Government, and appointments to such Federal offices from eligible lists; and for a

system of classification of said Federal officers; and the Congress authorized and empowered the President of the United States to make and promulgate rules and regulations for the government of said examinations, and classifications, for said Federal official positions, and promotions therein; and the authority powers and duties of said United States Civil Service Commission, were and
4 are conferred, delegated, prescribed, limited, regulated and enjoined by the laws of their creation, which is the law of the land; and their said powers and duties are thereby directed and restricted to the matter of selecting for appointments to *civil positions* under the government of the United States, and not under any state government, nor under the government of the District of Columbia; and their said powers and duties are ministerial and mandatory, and not discretionary.

Fifth. That notwithstanding the limitations of authority, powers and duties of the said United States Civil Service Commission, by the said organic act and acts aforesaid, restricting limiting and enjoining their duties as aforesaid, to the matter of selections for appointment to positions in the civil service of the United States, the said defendants the United States Civil Service Commission at the request of the said defendants the Commissioners of the District of Columbia, not regarding their plain duty, assuming erroneously and illegally to act in the premises beyond the scope of their authority, have at divers times and occasions used the public money and property, and the services of the officers and civil employees of the United States government, in holding unauthorized and illegal examinations for selections for appointments to positions under the District of Columbia, and are so purposing and intending to illegally and without warrant and authority of law, and in excess and abuse of their powers and authority, to hold divers other examinations, to wit: on the sixteenth day of September 1907, and
5 other future dates, for selections for positions under the government of the District of Columbia, at the request of the said defendants the Commissioners of the District of Columbia, and thereby, in violation of their plain duty and of the rights of these complainants, unlawfully use and expend the public money, contributed and paid by these complainants, and use the property and services of the employees of the government of the United States, without power, right or authority, and thus impose an illegal burden and exaction upon these complainants; as is clearly shown by a letter written by said United States Civil Service Commission to complainant's solicitor, dated August 21, 1907, a copy of which is hereto attached and marked "Exhibit A," and made a part hereof.

Sixth. The complainants further respectfully allege and represent, that the defendants the Commissioners of the District of Columbia hold their positions as executive officers of the municipal corporation, the District of Columbia, under and by virtue of certain acts of the Congress of the United States of which complainants pray the court to take judicial notice; that as such executive officers they have large discretionary powers, among other things in the

selection and appointments of employees in the service and government of said municipal corporation the District of Columbia; that they are bound however, and it is their plain duty, mandatory and not discretionary, to exercise the powers and authority conferred upon them, as such executive officers, with due regard to the civil and property rights and interests of all citizens, residents and tax payers of the said municipal corporation, the District of Columbia, including these complainants, equally and without class discriminations; that among the few civil rights and privileges enjoyed by the citizens and residents of the said District of Columbia are paying municipal taxes and charges, obeying the laws and aiding in their enforcement and being protected thereby, and holding of offices of trust, profit and distinction; that complainants, their dependents, relatives and others, citizens and residents as aforesaid, are entitled to be afforded equal opportunity and given equal protection in the enjoyment of their civil rights, as well as of their property rights, by the said municipal executive officers, the defendants the Commissioners of the District of Columbia, in the administration of the public business, affairs and concerns; yet notwithstanding their clear duty in the premises, but disregarding the same, and assuming illegally, arbitrarily and mischievously to act in violation of the civil rights of these complainants, and others as aforesaid, the said defendants Commissioners of the District of Columbia, as complainants are informed and believe and charge the same to be true, have adopted and employed and are now using and employing, and purpose to continue to so use and employ certain schemes and methods of selecting and appointing employees and officers under the government of the District of Columbia, in disregard, evasion and violation of the civil rights of these complainants and others, as aforesaid, by which they make class distinction, granting opportunities and showing favors to a certain few citizens and residents of the District of Columbia in the exercise of their said civil rights, and denying the same to these complainants, and others as aforesaid, and arbitrarily, illegally and mischievously excluding them from the benefits thereof; in that the said defendants, Commissioners of the District of Columbia have at odd times and irregular intervals, in the past, arranged and held, and purpose in the future, to wit on the 16th day of September 1907, and subsequently thereafter, to arrange and hold, certain alleged competitive examinations for a distinct class of residents of the said District of Columbia, for some selected positions in some branches of its service, but not for all of said positions in said branches or in said service, as vacancies may occur; that the character of said positions, and scope of and regulations for said competitive examinations are set forth in a printed Memoranda issued from the office of said defendants, Commissioners of the District of Columbia, attached hereto and marked "Exhibit B" and made a part hereof; that such regulations make invidious distinctions in matters of residence and citizenship, upon the part of applicants for the positions named, favoring a certain class and to the exclusion of others equally entitled; and the said

defendants, Commissioners of the District of Columbia, also, in said memoranda of regulations, reserve to themselves the right to disregard the result of said examinations and at any time change the conditions for making said appointments, thus making said examinations for said selected positions, uncertain in their effect and purpose; that the said defendants, Commissioners of the District of Columbia, without right, ask, request, receive, accept and
8 use the voluntary services of the defendants, Commissioners of the United States Civil Service Commission, in making said competitive examinations, without authority of Congress or other legal right; and these petitioners, and others, citizens and residents, aforesaid, are denied and excluded from the benefits and opportunities of said competitive examinations for positions in the civil service of the government of the District of Columbia, which they desire to compete for and could fill, but which the said defendants, Commissioners of the District of Columbia neglect, fail and refuse to throw open to such competition in and for the other places and cases above mentioned; and thus wrongfully and illegally make, and establish and maintain, class distinctions between such favored residents aforesaid and these petitioners and others, thus denying to petitioners their civil rights and privileges as residents and citizens as aforesaid; and in this behalf, petitioners attach hereto, "as Exhibit C" and make a part hereof, a copy of a letter from the Health Officer of the District of Columbia, dated September 10, 1907, and addressed to Dr. Thomas J. Sullivan, a resident and citizen of said District.

Seventh. And petitioners further allege and represent, that by reason of the unauthorized and illegal assumption and exercise of powers beyond the scope of their authority, of all of said defendants, in their capacities as aforesaid, in their actions and conduct herein-
9 before set forth and described, these petitioners, and other residents and citizens as aforesaid, are illegally burdened with taxation and deprived of their civil rights, as aforesaid, as they are informed and believe, and so charge to be true; and petitioners have requested the defendants Commissioners of the United States Civil Service Commission to cease and determine their illegal acts herein complained of, by letter to said defendants from petitioners' solicitor a copy of which is hereto attached marked "Exhibit D," but petitioners are advised that said defendants intend to persist in said unlawful acts.

And complainants being without adequate remedy at law, now bring this suit.

Prayers.

Wherefore the premises considered, these petitioners respectfully petition and pray:

1. That due process issue out of this honorable Court citing the said defendants to appear and answer the exigencies of this bill.

2. That pending the hearing and determination of this suit, and until final order and decree the defendants Commissioners of the United States Civil Service Commission, be enjoined and restrained

from holding further Civil Service examinations for and at the request of defendants Commissioners of the District of Columbia.

3. That upon final hearing the defendants Commissioners of the United States Civil Service Commission be perpetually enjoined from holding and conducting such civil service examinations for
10 defendants Commissioners of the District of Columbia, until and unless lawfully empowered and authorized to hold the same.

4. That complainants be granted such further and other relief as to this honorable Court may seem just and proper; besides their costs in this behalf.

And your petitioners will ever pray.

The defendants to this Bill are the parties named as such in the caption.

J. STEWART HARRISON, M. D.
ANDREW M. CURRY.

RICHARD P. EVANS,
Solicitor for Complainants.

The complainants herein on oath say, that they have read over and understand the statements contained in the foregoing bill of complaint; that the matters and things therein stated of their own knowledge are true, and the matters and things stated upon information and belief, they believe to be true.

J. STEWART HARRISON.
ANDREW M. CURRY.

Subscribed and sworn to before me this 13th day of September, A. D. 1907, by the complainant, Andrew M. Curry.

[SEAL.]

B. B. WILSON,
Notary Public, D. C.

Subscribed and sworn to before me this 14th day of September, 1907, by the complainant J. Stewart Harrison.

[SEAL.]

GEORGE S. KING,
Notary Public, D. C.

11

EXHIBIT "A."

(Copy.)

UNITED STATES CIVIL SERVICE COMMISSION,
WASHINGTON, D. C., August 21, 1907.

Mr. Richard P. Evans, 1413-1415 G. St. N. W., Washington, D. C.

SIR: The Commission is in receipt of your letter of August 15, in which you request to be informed whether there is any requirement or authority of law or executive order providing for holding competitive examinations for positions in the service of the Dis-

trict of Columbia, such as assistant attorneys, surveyors, police surgeons deputy health officers, or for similar appointments. If so, you ask for reference to the law or order and to the appropriation for payment of such expenses of such examinations. You also desire to know when any such examinations have recently been held or are to take place before the next session of Congress.

Your letter was addressed to the Commission probably because of the fact that the Commission has at times held examinations at request of the Commissioners of the District of Columbia, for the purpose of securing eligibles for appointment in the service of the government of the District of Columbia. So far as the Commission is aware, there is no requirement of law or executive order that it should hold examinations for the Commissioners of the District of Columbia, but it has been its practice to do so as a matter of courtesy, when the holding of such examinations did not interfere with the regular business of the Commission. Examinations have not been held for all the positions mentioned in your letter, but several examinations have been held for the position of policeman and for medical inspector of schools. The following executive order approved by the President on October 31, 1905, is an indication of the desire of the President that the Commission shall render assistance in securing suitable persons for appointment in the government of the District of Columbia:

"It is deemed advisable that competitive examinations shall be held for testing the qualification of applicants for appointment in a clerical capacity in the office of the Recorder of Deeds at Washington, such examinations to be confined to actual *bona fide* residents of the District of Columbia.

"The United States Civil Service Commission is therefore directed to render such assistance as may be practicable to the Recorder for the establishment and maintenance of a system of examinations to precede such appointments, to be open to all citizens of the District of Columbia qualified in respect to age, character, education and experience; and for that purpose to conduct examinations upon the request of the Recorder under such regulations as may be agreed upon by him and the Commission.

An examination for the position of a policeman was recently held, and another examination for the same position will be held on August 27. An examination for medical positions in the police and health departments will be held on September 16, 1907.

By direction of the Commission:

Very respectfully,
(Sig.)

JOHN A. McILHENNY,
Commissioner.

Office of the Commissioners of the District of Columbia.

Memoranda Relative to Appointments as Resident Physicians at Washington Asylum Hospital, the Home for the Aged and Infirm, and the Tuberculosis Hospital, as Physicians to the Poor, as Medical Inspectors of Public Schools, and as Police Surgeons.

* * * * *

Office of the Commissioners of the District of Columbia.

Supplementary Memoranda Relative to Appointments as Resident Physicians at the Washington Asylum Hospital, the Home for the Aged and Infirm, and the Tuberculosis Hospital, as Physicians to the Poor, as Medical Inspectors of Public Schools, and as Police Surgeons.

1. The examination of applicants for appointments as resident physicians at the Washington Asylum Hospital, the Home for the Aged and Infirm, and the Tuberculosis Hospital, as Physicians to the Poor, as Medical Inspectors of Public Schools, and as Police Surgeons, has been postponed from August 16th, 1907, the date originally announced. It will be held on September 16th, 1907. Applications must be filed not less than one week prior to the date set for the examination.

15 2. A vacancy will exist in the corps of Police Surgeons prior to the examination above referred to. The appointee who fills this vacancy will be required to reside within, or in immediate proximity to, the territory bounded as follows, known as the second surgical district:

Beginning at the middle of K street, from First street east, to 15th street west, north along the middle of 15th street to the middle of Q street, west on Q street to Rock Creek, north along the east side of Rock Creek to the District Line, east along the District Line to Queens Chapel Road, south along Queens Chapel Road to Brentwood Road, along Brentwood Road to Florida Avenue, along Florida Avenue to First street east, south on First street to the point of beginning.

August 10, 1907.

* * * * *

1. *Restrictions as to Residence.*—Applicants for appointments to any of the positions named above (except those of resident physician at the Washington Asylum Hospital, the Home for the aged and infirm, and the Tuberculosis Hospital) must, during the five-year period immediately preceding the dates of their applications, have been *bona fide* residents of the District of Columbia for not less than two years. Police surgeons must have actually and *bona fide* resided in the District of Columbia for at least two years, *next preceding* the dates of their appointments. There is no restriction

as to duration of residence in the District of Columbia upon applicants seeking appointments as resident physicians in the institutions named.

16 2. *Personal Qualifications.*—Every applicant must be not less than twenty-one years of age, of moral character satisfactory to the Commissioners, and free from physical defects and from habits liable to interfere with the proper discharge of the official duties of the position sought. Women may be examined for appointments as medical inspectors of schools, but for none other of the positions named. There are no colored resident physicians at the institutions named above and no colored police surgeons.

3. *Professional Qualifications.*—Every applicant must, at the time of making application, have been graduated by a reputable medical school as a doctor of medicine. Every applicant for appointment as a physician to the poor, a medical inspector of schools, and as a police surgeon must, at the time of making application, have been licensed to practice medicine in the District of Columbia. Assistant resident physicians at the Washington Asylum Hospital must obtain licenses to practice medicine in the District of Columbia within twelve months after the date of their appointments—that is, before they are promoted to the position of resident physician.

Every medical inspector of schools must, at the time of his *appointment*, have had at least five years' experience in the practice of medicine in the District of Columbia, but the law does not require that this practice shall have *immediately* antedated the appointment.

17 Every police surgeon must, at the time of his appointment, have been actively engaged in the practice of his profession for a period of at least three years, *next preceding* the date of his appointment, but with respect to police surgeons, the law does not require that the practice shall have been in the District of Columbia.

4. *Resident Physicians.*—Persons passing the examination of applicants for appointments as resident physicians at the institutions named above will, as vacancies occur, be appointed as third assistant resident physicians at the Washington Asylum Hospital. After serving for a period of four months, if his record has been satisfactory, a third assistant resident physician will be promoted to the position of second assistant, and at the expiration of four months more the second assistant will under the same condition be appointed as first assistant. None of these positions carry any salary, but the appointee receives in compensation for his services his board, lodging, and washing. Each first assistant resident physician at the Washington Asylum Hospital, after having served four months as such, if his record has been satisfactory, and if he has obtained a license to practice medicine in the District of Columbia, will be promoted to the position of resident physician, in which position he will receive not only his board, lodging, and washing, but also salary at the rate of \$480 per annum. After having served four months as resident physician at the Washington Asylum Hospital, if his record has been satisfactory, the incumbent of this office will

18 be appointed as physician and pharmacist at the Home for the Aged and Infirm, with compensation at the rate of \$480 per annum, and, having served four months in this position, if his record has been satisfactory, he will be appointed as resident physician at the Tuberculosis Hospital, at the same rate of compensation. At the expiration of four months' service as resident physician at the Tuberculosis Hospital, if his record has been satisfactory, he will be given by the Board of Charities a certificate attesting his good conduct and will be eligible for appointment as a physician to the poor.

The ordinary duration of the service of a person acting as assistant resident physician, and later as resident physician, at the institutions named above is two years, and every person entering upon this service is expected to complete his full term. Promotion may, however, be more rapid than stated above if by reason of death, resignation, or removal of resident physicians of relatively senior rank, vacancies occur. But if by reason of death, resignation, or removal the ordinary course of promotions be interfered with, the Board of Charities and the Health Officer may, in their discretion, extend the term of any appointee in any of the positions named so as to require him to serve his full term of two years before becoming eligible for appointment as a physician to the poor.

19 5. *Physicians to the Poor.*—The position of physician to the poor will, so far as is practicable, be filled by promotion from the position of resident physician at the Tuberculosis Hospital, and every resident physician at that institution who has rendered the service described in the preceding paragraph will have an opportunity, if he so desires, of being so appointed. Colored physicians to the poor may, however, in the discretion of the Health Officer and of the Commissioners, be appointed without examination, from among resident physicians who have rendered not less than two years' satisfactory service in the Freedmen's Hospital, and homeopathic physicians to the poor may similarly be appointed from among resident physicians who have rendered not less than two years' satisfactory service in the National Homeopathic Hospital, if such physicians have been appointed after competitive examinations in the first instance. Except as provided for above, physicians to the poor will be appointed from among the substitute physicians to the poor, and substitute physicians to the poor will be appointed after competitive examination. No person is eligible for examination for appointment as a substitute physician to the poor who has not had at least one year's experience in a general Hospital or two years in private practice, or the equivalent thereof.

Physicians to the poor are not required to reside in the Districts assigned to them, but must provide telephone communications at their own expense. The compensation of a physician to the poor is one dollar per diem, deductions being made for all time lost on account of sickness or otherwise. The term of a physician to the poor is necessarily limited in order to provide for the appointments from time to time of retiring resident physicians of the Tuberculosis Hospital as physicians to the poor. At the expiration of the term

20 of service of a resident physician at the Tuberculosis Hospital, who has rendered all service required by section four of these memoranda, if no vacancy exists in the corps of physicians to the poor, the senior physician to the poor, or the physician to the poor rendering the least satisfactory service, at the discretion of the Board of Charities, will be expected to resign to make room for the promotion of the resident physician whose term expires. There are now twenty-two physicians to the poor, but as there are three homeopathic physicians to the poor, and as it has been customary to appoint a physician to the poor from among physicians of the colored race, the possible duration of the office of a physician to the poor is six years. If a physician to the poor renders unsatisfactory service, however, he may be asked to resign before the expiration of this period; and if the services of a physician to the poor are so eminently praiseworthy that, rather than to allow him to resign simply because of his seniority, other physicians to the poor are asked to resign in order to make way for the appointment of the retiring resident physician of the Tuberculosis Hospital, the term of service of a physician to the poor may be lengthened beyond the six-year period.

6. *Medical Inspector of Schools.*—Any physician to the poor who has performed satisfactorily all duties required of him in the several positions referred to in sections four and five of these memoranda and who was originally appointed after the competitive examination herein provided for, may, if otherwise qualified, and without further examination, be appointed a medical inspector of schools, 21 if a vacancy occurs in the corps of inspectors within one year after the expiration of his term of service as a physician to the poor. Otherwise all appointments as medical inspectors of schools will be made after competitive examinations held for the purpose of determining directly the qualifications of applicants. Since the law provides for the appointment of a certain number of white medical inspectors of schools, and of a certain number of colored medical inspectors, however, applicants for appointments to these positions will be divided into two groups, white and colored, and an applicant belonging to either of these groups will be thrown into competition only with applicants of the same class. Appointments will be made from among the white applicants or from among the colored applicants as the exigencies of the service require.

The compensation of a medical inspector of public schools is five hundred dollars per annum. These inspectors are not required to reside in the districts assigned to them, but must provide telephone service at their own expense. They are not appointed to serve for any stated period, but in practice serve during good behavior.

7. *Police Surgeons.*—Any medical inspector of schools who has performed satisfactorily all duties required of him, and who is otherwise qualified, and any physician to the poor who is eligible for appointment without examination as a medical inspector of schools under the provisions of section six, may, without examination, be appointed as a police surgeon if the Commissioners so

22 elect. Otherwise all appointments as police surgeons will be made after competitive examinations held for the purpose of determining directly the qualifications of applicants.

Every police surgeon is required to reside in one of the police precincts, or in immediate proximity to one of the police precincts, that comprise the district under his supervision. A physician applying for appointment as a police surgeon will, upon being appointed, be expected to move into the district assigned to him or into immediate proximity thereto within thirty days after the date of his appointment if, when appointed, he does not so reside. The compensation of a police surgeon is six hundred dollars per annum, and telephone service is provided without expense to him. Police surgeons are appointed for no stated periods, but in practice hold office during good behavior.

* * * * *

Five questions will be asked in each of the groups of subjects named above. The questions will be the same for all applicants. The passing mark is seventy. Applicants will be notified of their rating as soon as practicable after the examination.

The examination will be held in Washington, the exact place to be determined later. Applicants will be notified where to appear for examination when they receive their formal letters of authority, authorizing them to appear. The examination will begin at nine o'clock a. m., on August 16, 1907, and will last seven consecutive hours. Each applicant must bring with him all necessary pencils, pens, and ink. He must, however, bring no paper.

23 9. *Eligibility.*—Applicants who pass the examination will be eligible for appointments for a period of one year from and after the date of the receipt by the Commissioners of the District of Columbia of the formal report of the United States Civil Service Commission showing such eligibility.

* * * * *

11. *Changes in Methods of Appointment.*—The conditions governing appointments to the positions above named may be altered at any time at the discretion of the Commissioners of the District of Columbia.

12. *Applications.*—Persons desiring to enter the examination referred to above, must file their applications with the Secretary to the Board of Commissioners on blanks provided by the Commissioners for that purpose. Such application blanks can be procured by applying to the Secretary to the Board of Commissioners, at the District Building. Applications must be filed not less than one week prior to the date set for the examination.

June 8, 1907.

24-28

EXHIBIT "C."

(Copy.)

HEALTH DEPARTMENT OF THE DISTRICT OF COLUMBIA,
WASHINGTON, *September 10, 1907.*

Dr. Thomas J. Sullivan, 905 Sixth Street Southwest, Washington, D. C.

DEAR SIR: Your letter of 31st ultimo, addressed to the Commissioners, has been referred to this Department. In reply I beg to state that the position of deputy health officer will not necessarily be filled from the list of eligibles established by the examination to be held on the 16th instant.

Respectfully,
(Signed)

WM. C. WOODWARD, M. D.,
Health Officer.

WCW/AGC.

29

Rule to Show Cause.

Filed September 17, 1907.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

In Equity. No. 27353.

J. STEWART HARRISON and ANDREW M. CURRY, Complainants,
vs.

JOHN C. BLACK, M. M. GREEN, and JOHN A. McILHENNY, Commissioners of the United States Civil Service Commission, and HENRY B. MACFARLAND, HENRY L. WEST, and JAY J. MORROW, Commissioners of the District of Columbia.

Injunction.

Upon consideration of the averments of the Bill of Complaint in the above entitled cause, it is by the court this 17th day of September, 1907, ordered, that the defendants Commissioners of the United States Civil Service Commission show cause on the 27th day of September, 1907, at 10 o'clock A. M., in Equity Court, why they should not be restrained and enjoined pending the hearing of this cause as prayed in said Bill of Complaint: provided a copy of this Rule and of said Bill of Complaint be served upon said
30 Commissioners of the United States Civil Service Commission at least two clear days before the return day hereof.

HARRY M. CLABAUGH,
Chief Justice.

Marshal's Return.

Served copy of within rule and copy of the bill of Complaint in this cause on John A. McIlhenny one of the Commissioners of the United States Civil Service Commission.

Sept. 18, 1907.

AULICK PALMER,
Marshal.
 S.

Return to Rule to Show Cause.

Filed October 4, 1907.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

In Equity. No. 27353.

J. STEWART HARRISON and ANDREW M. CURRY, Complainants,
vs.

JOHN C. BLACK, H. M. GREENE, and JOHN A. McILHENNY, Commissioners of the United States Civil Service Commission, and HENRY B. F. MACFARLAND, HENRY L. WEST, and JAY J. MORROW, Commissioners of the District of Columbia, Defendants.

31 Return of John C. Black, H. M. Greene, and John A. McIlhenny, Commissioners, Constituting the United States Civil Service Commission, to the Rule to Show Cause Issued Herein.

These defendants, John C. Black, H. M. Greene and John A. McIlhenny, Commissioners constituting the United States Civil Service Commission, separately demurring to the bill of complaint herein, but nevertheless insisting upon the hearing of this return on the numerous grounds assigned in the said demurrer, and upon the failure of the bill to show any ground of jurisdiction in this court, in formal compliance with the rule issued do make return thereto as follows:

1. They have no knowledge of the allegations of the first paragraph of the bill and deny the allegation that the suit is brought by complainants in their own right and for the benefit of themselves and others similarly interested and aggrieved in so far as such allegation implies any right to file this bill.

2. They admit that they are the Commissioners constituting the United States Civil Service Commission and are officials of the general government of the United States, but deny the legality of their being sued in such capacity in this bill. They have no knowledge of the remaining allegations of the paragraph in respect to the Commissioners of the District of Columbia.

3. They do not know whether or not the complainants are citizens of the United States or have been and are residents of the District of Columbia, nor have they any knowledge that the
32 complainants are tax-payers and bear their proportionate part and share of the expenses of the government of the United States for the District of Columbia, all of which is alleged in the third paragraph of the said bill. The defendants have no knowledge as to whether the complainants actually pay any taxes on any property in the District of Columbia, as the bill is uncertain in this respect in that it does not aver in what way or how they are tax-payers and the records of the District of Columbia show that one J. S. Harrison pays a personal tax amounting to one dollar and thirty-five cents in a year, and that one Andrew M. Curry is assessed with a tax on real estate amounting to fifteen dollars and twenty-seven cents, but the defendants are not advised whether the said Curry pays this tax himself or whether the property assessed in his name is held by him for other parties, which, they are advised and informed, is the case. The remaining allegations of the said third paragraph are immaterial and irrelevant and advance conclusions of law as to which these defendants are not obliged to make answer; but nevertheless, in answer to the said third paragraph these defendants say that the complainants, even if tax payers in the District of Columbia, are not thereby tax payers to the United States, nor do they bear any part of the financial burden of the United States in the maintenance of the Civil Service Commission, and therefore, by reason of any averment in the said bill, complainants have not shown that they are in any wise interested in the disbursements of the moneys of the United States in the support of
33 the said Civil Service Commission, nor that the complainants have any right to interfere with or criticize the method or conduct of the said Civil Service Commission by the general government of the United States.

4. The allegations of the fourth paragraph of the said bill, these defendants say import matters of law as to which they are not obliged to make answer, and submit the same to the consideration of the court.

5. In answer to the fifth paragraph of the said bill these defendants deny that the said Civil Service Commission have violated or exceeded any authority, power or duties conferred on it by law, and deny that in complying with the request of the Commissioners of the District of Columbia in extending the facilities of its system of examinations to the said Commissioners of the District of Columbia in order to secure individuals for positions in the service of the said District of Columbia, that these defendants have contravened any law or exceeded their authority. These defendants say with respect to the concluding allegation of the said fifth paragraph that in so aiding the Commissioners of the District of Columbia the said Civil Service Commission has not expended money unlawfully which complainants have contributed, that the fact and truth is that the said complainants have contributed no money whatever to the cost of the maintenance of the said Civil Service

Commission, and deny that they have illegally used the services and property of the employees of the government of the United States.

6. These defendants submit that the allegations of the
34 sixth paragraph of the bill relate exclusively to the Commissioners of the District of Columbia, their duties, laws relating to the same, and other matters with knowledge of which these defendants are not charged and which they do not necessarily have, and that they are not, therefore, bound to make answer unto the same. But these defendants further submit that the said matter is incompetent and irrelevant in so far as these defendants are concerned, and renders the said bill multifarious in that it seeks to unite in the said bill as ground of complaint against these defendants, matters chargeable alone against the Commissioners of the District of Columbia. And these defendants therefore pray the court, on the hearing of this return, to take notice of this multifarious feature of the bill and consider the same in the disposition of the case. And they further represent that although the matters charged in the sixth paragraph are deemed essential by the complainants to the granting of the injunction against these defendants sought by the said rule, complainants have elected not to secure a rule against the Commissioners of the District of Columbia and they have not, therefore, before the court on the hearing of this rule, all the parties necessary for the granting of the restraining order which is sought.

7. Answering the seventh paragraph of the said bill these defendants say that the allegations thereof are not certain and specific, but are mere general conclusions, either of fact or of law, and do not, therefore, require these defendants to answer the same, but
35 that, nevertheless, they say that by reason of nothing therein stated does it appear that the complainants or either of them are in any manner affected or have sustained any damage personal to themselves or have any grievance by reason of any of the acts set forth in the said bill, or any right, title or interest to any of the positions affected by the acts complained of in the said bill whereon to have any standing in a court of equity for the relief prayed or any relief whatever.

But further, and more fully answering the said bill these defendants say that it is true that on the 16th of September, 1907, certain examinations were to be held at the Civil Service Commission of the said United States for positions in the service of the District of Columbia. The requirements of said examinations were prescribed by the Commissioners of the District of Columbia and the said examinations included only the mental tests, the physical tests having been personally conducted under the direction of the Commissioners of the District of Columbia. The said Civil Service Commission being established by Congress is placed exclusively under the control of the President of the United States, subject to such orders as may be prescribed by him for its maintenance and to the general laws. It is true that the said Civil Service Commission examines applicants under the classified service, and that the positions in the District of Columbia are not within the classified service. In

1895 Mr. Cleveland, then President of the United States, directed the Civil Service Commission to provide examinations for persons seeking places under the government of the District of Columbia, instructing the Commission, however, that in so doing that it should not add to its expense. This more particularly appears by a copy of a letter issued July 16, 1895, by the President of the United States to the said Civil Service Commission appended hereto marked Exhibit A and prayed to be read as a part hereof. Accordingly, since January 1, 1896, divers examinations have been held by the Civil Service Commission for different departments of the District of Columbia service and have continued up to September 16, 1907. Previous to the order of President Cleveland in this behalf a request was made by Commissioner Ross, the then president of the Board of Commissioners of the District of Columbia, that this course be pursued because of the very evident superiority of service obtained as a result of such examinations and the desirability that the principles of Civil Service be extended as far as possible to the District of Columbia. Between 1896 and to the present time, these examinations have been held and in so doing the Civil Service Commission has entailed no extra expenses nor prevented itself from discharging its ordained functions for the general government. When an examination is desired to be held for places in the District government, a request to that end has usually been made by the Commissioners of the District of Columbia or the head of the particular department in which the position is to be filled. The examinations have been held without any increase in the force of the Civil Service Commission. The cost of the printing of papers and of the examination questions have been borne by the District of Columbia; authority to take the said examinations is furnished by the proper officer of the District of Columbia, and after the examinations were held, the papers were rated and forwarded to the District Government and it has been optional with the District Commissioners to select any of the persons who passed the said examination without regard to relative standing; said Civil Service Commission has, therefore, not assumed any functions in the government of the District of Columbia, but has only extended the courtesy and supplied its machinery for examinations at the request of the proper officers of the District of Columbia.

Similar services have been rendered by the Civil Service to the Philippine Government. The Philippine service is separate and distinct from the service in the United States. By an executive order of November 30, 1900, the commission was directed to render similar assistance to the Civil Service Board of the Philippines. In like manner the Commission is called upon from time to time to advise various states and municipalities relative to the scope of examinations. The whole matter, these defendants respectfully submit, is one within the sole cognizance and province of the Executive and is removed by organic law from the jurisdiction of this court to inquire into, review, or in any manner control by injunction, or

otherwise, its administration or the orders issued by the President of the United States in connection with the same.

38 These defendants further submit that this bill seeks to have this court intrude upon the province of the executive department of the government and supersede the president in the direction of the administration of the Civil Service Commission and modify an order issued by the President under the authority of law, by reason whereof and further, because of the failure of the bill to show any right, title or interest in the complainants to file the said suit as contributors to the expense of the said Commission, or because of any particular damage sustained by them, or about to be sustained, these defendants respectfully submit that there is no jurisdiction whatever in this court to grant a restraining order or to consider the said bill, and they therefore respectfully pray that this court not only discharge the said rule, but taking notice of the want of jurisdiction in the bill, also dismiss the said bill.

JOHN C. BLACK,
H. F. GREENE.

DISTRICT OF COLUMBIA, ss:

John C. Black and H. F. Greene, being first duly sworn, on oath depose and say that they have read over the foregoing return by them subscribed and know the contents thereof; that the matters and facts therein stated upon their personal knowledge are
39 true, and those stated upon information and belief they believe to be true.

JOHN C. BLACK.

Subscribed and sworn to before me this 3d day of October, 1907.
[SEAL.]

G. R. WALES,
Notary Public, D. C.

40

EXHIBIT "A".

(Copy.)

GRAY GABLES, BUZZARDS BAY, MASS., *July 16, 1895.*

To the Civil Service Commission.

GENTLEMEN: I have received a letter from Mr. Ross, the President of the Board of Commissioners for the District of Columbia, asking my approval of a plan by which your Board may provide examinations for those seeking places under the District government.

I not only consent but most earnestly request that you further in every way possible this proposition, and do all that present laws permit to aid in applying the principles of the Civil Service System to appointments to be made in the District of Columbia.

Of course you will not be justified in doing this to the extent of adding thereby to the expenses of your Commission.

Yours very truly,
(Signed)

GROVER CLEVELAND.

41

Demurrer.

Filed October 4, 1907.

In the Supreme Court of the District of Columbia, Holding an
Equity Court.

Equity. No. 27353.

J. STEWART HARRISON and ANDREW M. CURRY, Complainants,

vs.

JOHN C. BLACK, H. M. GREENE, and JOHN A. McILHENNY, Com-
missioners of the United States Civil Service Commission, and
HENRY B. F. MACFARLAND, HENRY L. WEST, and JAY J. MOR-
ROW, Commissioners of the District of Columbia, Defendants.

Come now the defendants John C. Black, H. M. Greene, and
John A. McIlhenny, Commissioners, constituting the United States
Civil Service Commission, and showing to the court that it does not
appear in and by the said bill of complaint filed herein and by rea-
son of any allegation therein that there is any equity in the said
bill, or any right, title or interest in the complainants to secure
the relief therein prayed or any relief whatever, and that it does
not appear that there is any jurisdiction in this court to grant the
relief prayed or any relief whatever, or jurisdiction to review or
make any order with respect to the subject matter stated in the said
bill, do demur to the said bill and say that the same is bad in
42 substance, among the grounds, among others, following:

1. It does not appear in and by the said bill that the com-
plainants or either of them are tax payers to the United States, or
that the complainants or either of them have any part in the con-
tribution to the expenses of the Civil Service Commission defrayed
by the United States.

2. It does not appear in and by the said bill that the com-
plainants or either of them actually paid any taxes to the District
of Columbia, or in what manner the complainants or either of
them postulating the payment of any such taxes would become tax-
payers to the said United States.

3. It does not appear in and by the said bill that the com-
plainants or either of them have sustained or are about to sustain
any special damage or have become or are about to become indi-
vidually affected by reason of the exercise of any power by the
Civil Service Commission complained of in the said bill.

4. The bill fails to show that the complainants or either of them
are in any manner applicants for any of the positions affected by
the acts of the said Civil Service Commission or of the District
Commissioners complained of in the said bill and fails to show that
the complainants or either of them have any grievance by reason
of said acts, and fails to show that the complainants or either of
them are eligible within the rules prescribed by the Commissioners
of the District of Columbia for appointment to the positions prece-

dent to which examinations are held at the said Civil Service Commission.

43 5. There is no jurisdiction in this court to interfere with the administration of the Civil Service Commission or to enjoin its conduct and thus intrude upon an executive department of the government.

6. The complainants or either of them have no title, right or interest in or to the appointment to any position in the Civil Service of the said United States or the District of Columbia or in or to any such position.

7. This court has no jurisdiction to review or determine or dictate the method of application by examination and selection of candidates for position in the Civil Service of the United States or in the service of the District of Columbia and has no jurisdiction to enjoin appointment or removal from the same, and accordingly has no jurisdiction to consider the acts and decision of the Civil Service Commission of the United States or of the Commissioners of the District of Columbia in the sphere of their jurisdiction to select individuals for positions vested by Congress under their control.

8. The said bill is multifarious in that it unites as matters of separate complaint separate grounds relating to the Civil Service Commission and matters relating to the Commissioners of the District of Columbia, and the said defendants, constituting the said Civil Service Commission are in no manner concerned in the matters in the said bill relating to the Commissioners of the District of Columbia, nor are they obliged to make answer unto the same.

9. The said bill is repugnant and frivolous.

44 10. And for other grounds.

DANIEL W. BAKER,

*Attorney of the United States in and for the
District of Columbia.*

DISTRICT OF COLUMBIA, ss:

We, John C. Black and H. M. Greene, do say that we have read over the foregoing demurrer, by us subscribed, and state that the same is not interposed for delay.

JOHN C. BLACK.

H. F. GREENE,

alias H. M. GREENE.

Subscribed and sworn to before me this 3d day of October, 1907.

[SEAL.]

G. R. WALES,
Notary Public, D. C.

I, Daniel W. Baker, Attorney of the United States in and for the District of Columbia, do hereby certify that I am Solicitor for the defendants in the above entitled cause, for whom the above demurrer has been signed, and that in my opinion the same is well founded in law.

DANIEL W. BAKER,

*Attorney of the United States in and for the
District of Columbia.*

45

Decree.

Filed October 14, 1907.

In the Supreme Court of the District of Columbia.

In Equity. No. 27353.

J. STEWART HARRISON, ANDREW M. CURRY,
vs.

JOHN C. BLACK, H. M. GREENE, JOHN A. McILHANEY, Commissioners of the United States Civil Service Commission; HENRY B. F. MACFARLAND, HENRY L. WEST, and JAY J. MORROW, Commissioners of the District of Columbia.

This cause coming on to be heard upon the bill of complaint, the rule to show cause issued against the Commissioners constituting the United States Civil Service Commission, the return thereto, the demurrer of said Commissioners constituting the said Civil Service Commission to the bill of complaint (said demurrer, upon consent of solicitor for complainants, being heard as upon final hearing), and being argued by counsel and considered by the Court, it is this 14th day of October, A. D., 1907,

Adjudged, ordered and decreed, that the rule to show cause issued against the Commissioners constituting the United States Civil Service Commission be, and the same hereby is, discharged; that the demurrer to the bill be, and the same hereby is, sustained, and that the bill of complaint be, and the same hereby is, dismissed.

HARRY M. CLABAUGH,
Chief Justice.

From the foregoing order complainants, by their solicitor, in open court note an appeal to the Court of Appeals of the District of Columbia, and the amount of the appeal bond is hereby fixed in the sum of \$100.

HARRY M. CLABAUGH,
*Chief Justice.**Memorandum.*

November 5, 1907.—Appeal bond filed.

Stipulation as to Demurrer.

Filed November 15, 1907.

In the Supreme Court of the District of Columbia.

Equity. No. 27353.

HARRISON ET AL., Complainants,

vs.

BLACK ET AL., Defendants.

It is hereby stipulated and agreed between counsel for the complainants and counsel for the defendants the Commissioners
 47 of the District of Columbia, that the demurrer filed herein
 by the defendants the Commissioners of the United States
 Civil Service Commission be taken and accepted *nunc pro tunc* as
 and for the demurrer of these defendants.

RICHARD P. EVANS,

Counsel for Complainants.

E. H. THOMAS,

*Counsel for Defendants, Commissioners of the
 District of Columbia.**Directions to Clerk for Preparation of Transcript of Record.*

Filed November 25, 1907.

In the Supreme Court of the District of Columbia.

Equity. No. 27353.

J. STEWARD HARRISON ET AL., Complainants,

vs.

JOHN C. BLACK ET AL., Defendants.

The clerk of the Supreme Court of the District of Columbia will prepare the transcript of record in this cause on appeal by complainant to the Court of Appeals by the District of Columbia; such transcript to consist of the following papers and proceedings:

1. The bill of complaint and attached exhibits A, C and D, together with the Title of exhibit "B" with the supplementary
 48 memoranda attached thereto, and paragraphs 1, 2, 3, 4, 5,
 7, 9 and 11 of said exhibit "B".

2. The Rule to show cause.

3. Answer to Rule of defendants Commissioners of the United States Civil Service Commission.

4. Demurrer of said defendants.

5. Appearance and stipulation of counsel for the defendants the Commissioners of the District of Columbia.

6. Final decree and note of appeal.

7. Memoranda of bond on appeal, etc.

RICHARD P. EVANS,

Solicitor for Complainants.

Memorandum.

Friday, December 6th, 1907.—Time in which to file Transcript of Record in Court of Appeals extended to the 6th day of January, 1908, inclusive.

49 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 48 both inclusive, to be a true and correct transcript of the record according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 27353, in equity, wherein J. Stewart Harrison, *et al.* are Complainants, and John C. Black, *et al.* are Defendants, as the same remains upon the files and of record in said Court.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of said court at the city of Washington, in said District, this 19th day of December, A. D., 1907.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

50 In the Court of Appeals of the District of Columbia,
January Term, 1908.

No. 1850.

J. STEWART HARRISON and ANDREW M. CURRY, Appellants,
vs.

JOHN C. BLACK ET AL. and HENRY B. MACFACLAND ET AL.

The Clerk of the Court of Appeals of the District of Columbia, in the preparation of the Transcript of Record for printing in the above entitled case, will please omit therefrom the matter contained in the Transcript from the Supreme Court of the District of Columbia on pages 25 to 40 inclusive, namely, petitioner's "Exhibit D," the Rule to Show Cause and the Return thereto, as being unnecessary and immaterial to the full presentation of the questions for review by the Court of Appeals, raised by this appeal from the decree below sustaining the demurrer to the petition of the appellants, to-wit: the sufficiency and certainty in fact and law of the averments of said petition, the jurisdiction of said court in the premises, and the action *ultra vires* of the appellees.

The remainder of said transcript to be printed.

RICHARD P. EVANS,
Attorney for Appellants.

To Daniel W. Baker, Esq., and E. H. Thomas, Esq., attorneys for appellees.

DEAR SIR: Please take notice that I have filed with the Clerk of the Court of Appeals the transcript of record in the above entitled cause, from the Supreme Court of the District of Columbia, with the foregoing designation as to preparation of the printed record.

Very respectfully,

RICHARD P. EVANS,
Attorney for Appellants.

January 6, 1908.

Copy of foregoing served on Mr. Baker and Mr. Thomas, January 6, 1908.

RICHARD P. EVANS,
Attorney for Appellants.

(Endorsed:) No. 1850. In the Court of Appeals of the District of Columbia: Harrison *et al.* Appellants *vs.* Black *et al.* Designation by Appellants for Printed Transcript in Court of Appeals. Court of Appeals, District of Columbia, Filed Jan. 6, 1908. Henry W. Hodges, Clerk.

In the Court of Appeals of the District of Columbia.

No. 1850.

HARRISON ET AL., Appellants,
vs.
BLACK ET AL., Appellees.

The appellees, Black, Greene and McIlhenny, Commissioners of the United States Civil Service Commission, designate for the Transcript of Record those parts named by appellant and in addition thereto the rule to show cause and their return thereto being pages 29 to 40 inclusive.

D. W. BAKER,
STUART McNAMARA,
Att'ys for Appellees.
Atty's for Appellees.

BLACK, GREENE & McILHENNY.

(Endorsed:) No. 1850. Harrison *et al.* *v.* Black *et al.* Designation of Record by appellees, Black *et al.* Court of Appeals, District of Columbia, Filed Jan. 13, 1908. Henry W. Hodges, Clerk.

Endorsed on cover: District of Columbia supreme court. No. 1850. J. Stewart Harrison *et al.*, appellants, *vs.* John C. Black *et al.*, &c. Court of Appeals, District of Columbia. Filed Jan. 6, 1908. Henry W. Hodges, clerk.

